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In the Supreme Court of the United States

OCTOBER TERM, 1941

UNITED STATES OF AMERICA, PETITIONER

v.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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The Solicitor General prays that a writ of certiorari be issued to review a judgment of the Circuit Court of Appeals for the Second Circuit entered in this cause on May 1, 1941, which reversed judgments of conviction against respondents under the Act of June 18, 1934 (c. 569, 48 Stat. 979, 18 U. S. C., Sec. 420 (a)), known as the Anti-Racketeering Act.

OPINIONS BELOW

The opinion of the District Court overruling demurrers to the indictment (R. 77) is not yet reported. The opinions of the Circuit Court of Appeals (R. 2801–2810) are reported in 118 Fed. (2d) 684.

JURISDICTION

The opinion of the Circuit Court of Appeals directing reversal of the convictions was filed April 4, 1941 (R. 2801). A petition for rehearing (R. 2810–2813) was denied April 24, 1941 (R. 2813). The judgment of reversal was entered May 1, 1941 (R. 2814). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and under Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court.

QUESTION PRESENTED

Whether payments made by truck operators to individual members of a labor union to secure "protection" against violent interference with the operation of their trucks constitute "the payment of wages by a bona fide employer to a bona fide employee" within the meaning of Section 2 (a) of the Anti-Racketeering Act simply because those exacting such payments make a proffer of services which they are qualified to render.[1]

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[1] If the petition is granted, the Government will also urge that, even if the court below properly construed the statute, it should have affirmed the judgement of conviction (1) because all of the evidence of concerted action by the respondents proved either an absolute refusal to do any work or the actual performance of some work, and did not relate either to a proffer of services or to the rejection of proffered services; and (2) because, even assuming that there was a rejection of proffered services, the services proffered by respondents were not bona fide useful work but were in effect merely "protection" from their own interference with the truck owners in exchange for tribute.

STATUTE INVOLVED

The Act of June 18, 1934, c. 569, 48 Stat. 979, 18 U. S. C. Sec. 420 (a) *et seq.*, provides in part as follows:

> SEC. 2. Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—
>
> (a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or
>
> (b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or
>
> (d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both.
>
> SEC. 3. (a) As used in this Act the term "wrongful" means in violation of the crimi-

nal laws of the United States or of any State or Territory.

(b) The terms "property", "money", or "valuable considerations" used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee.

* * * * *

SEC. 6. Any person charged with violating this Act may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided*, That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States.

STATEMENT

The respondents are Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a labor union composed of some 10,000 New York City truck drivers, and 26 individual members of this union.[2]

[2] Two of respondents, Campbell and Furey, were delegates of Local 807, their particular jurisdiction being the west side of Manhattan (R. 2075, 2115). Four officers of Local 807 and another delegate were also indicted, but the Government dismissed as to them at the opening of the trial (R. 57, 165).

An indictment returned in May 1938 charged them with conspiring to use force and violence, and threats of force and violence, to coerce those engaged in shipping merchandise by truck to New York City from out-of-state points to pay $9.42 for each large truck and $8.41 for each small truck making deliveries in the city, in violation of Section 2 of the Anti-Racketeering Act (R. 54–71). The indictment further charged that the owners of these "over-the-road" trucks employed drivers who drove the trucks to their destination in New York City, unloaded them, and picked up any return load (R. 55–56).[3]

Respondents were likewise convicted under an indictment charging them, upon substantially the same facts, with violating Section 1 of the Sherman Act (R. 41–54, 2484–2487). The court below reversed these convictions and the Government is not seeking a review of this reversal.

The evidence showed or tended to show the following:

Groups of Local 807 men stationed themselves

[3] The indictment (R. 54–71) was in four counts, each of which set forth the same underlying facts. The first two counts charged conspiracies to violate, respectively, clauses (a) and (b) of Section 2 of the Act. Counts three and four charged a conspiracy to violate Section 2 (c). The respondents were all convicted under count one and some were also convicted under one or more of the remaining counts (R. 2484–2487). Each of the clauses (a), (b) and (c), defines certain conduct as unlawful. Clause (d) makes it unlawful to conspire "to commit any of the foregoing acts."

near the New York exit of the Holland Tunnel and at other points of entry into the city. When an over-the-road truck appeared, they sometimes jumped on the running board while the truck was stopped at a traffic light; they sometimes forced the truck to the curb, and, more frequently, they followed it to the place of unloading. They informed the driver that a Local 807 man would have to be employed—or at least paid—for unloading, the amount demanded being $9.42 for a large truck and $8.41 for a small truck.[4] This payment was demanded irrespective of whether the unloading had been begun, partly finished, or completed, and irrespective of whether any Local 807 man had taken any part in the unloading.[5] The demands were enforced by threats of personal injury to the driver, threats of damage to the truck, and by other forms of intimidation,[6] as well as by actual violence.[7]

After these enforced payments had gone on for some time, respondents communicated with the truck owners by telephone, mail, or personal visit, or through their drivers, and told the owners they would have to sign an agreement with Local 807 or

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[4] R. 233–235, 426–428, 466–468, 1329–1333, 1384–1385, 1463–1465, 1612–1613.

[5] R. 592–594, 923, 1153–1157, 1403–1405, 1460–1469, 1466–1470, 1634, 1708.

[6] R. 200, 238–239, 508, 622, 636, 1208, 1223–1224, 1347–1350, 1636–1637.

[7] R. 339–342, 629–630, 1218, 1624, 1677–1680, 1813–1814.

be driven out of business.[8] The agreements, which a number of owners were forced to sign, were on a printed form and merely set forth the regular union scale of pay, hours of work, etc.[9] They did not in any way relate to or deal with the special circumstances attendant upon the so-called employment of Local 807 men by the out-of-town truck owners.

The owner had no choice as to what member or members of Local 807 should be assigned to him; this was determined by the man who "made the job," that is, who first stopped his trucks.[10] While $9.42 or $8.41 was always demanded, arrangements for lower payments were sometimes made where the owner pleaded that to make full payments would put him out of business, or under other special circumstances.[11]

The District Court charged the jury that it should find the defendants not guilty if the money which they were charged with having obtained through the use of force and violence "was paid as wages, and if the defendants who received the

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[8] R. 519–520, 524, 527, 532–533, 832, 908–910, 912–913, 916–919, 1117–1119, 1122–1124, 1242, 1278, 1281, 1284–1286, 1372–1377, 1388–1389, 1424–1425, 1484, 1490–1493, 1661–1663.

[9] Gov't Exs. 4, 9, 15, 32, 38, 41, 46, 48, 51, 52, 53, 55, 57, 70; R. 2535–2539, 2544, 2545, 2550, 2554, 2555, 2556, 2557, 2559, 2560, 2561, 2562, 2564, 2570.

[10] R. 529–531, 546, 691–698, 818–820, 1065–1066, 1120, 1287, 1638.

[11] R. 632, 707–708, 831, 910–911, 919, 1425–1426, 1431; Gov't Ex. 18, R. 2548.

money were bona fide employees and the truck operators who paid the money were bona fide employers" (R. 2450). The court further charged (*id.*):

> The fact that any defendant may have done some work on a truck of an operator is not conclusive as to whether payments received by such defendants were wages; the jury may consider the performance of work by a defendant as evidence of the nature of the relationship between the defendant and the operator as establishing the status of a bona fide employer and a bona fide employee. If, however, what the operator was paying for was not labor performed but merely for protection from interference by the defendants with the operation of operator's trucks, the fact that a defendant may have done some work on an operator's truck is not conclusive.

The majority of the Circuit Court of Appeals held that the District Court had failed to instruct the jury properly with respect to the phrase in Section 2 (a) excluding from the prohibitions thereof "the payment of wages by a bona fide employer to a bona fide employee."[12] The majority reached this conclusion because it held that the foregoing exception exempted all payments ob-

[12] See also Section 3 (b) of the Act, which provides: "The terms 'property,' 'money,' or 'valuable considerations' used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee."

tained from an employer, even though by force or violence, if those exacting such payments proffered their services and were qualified to render the services which they proffered. The court therefore reversed the judgments of conviction (R. 2813–2814). Judge A. N. Hand dissented (R. 2809).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that moneys obtained from an employer by force or violence are not within the scope of section 2 of the Anti-Racketeering Act simply because those exacting such payments make a proffer of services which they are qualified to render.

(2) In holding that the District Court's instructions to the jury were erroneous.

(3) In reversing the judgments of conviction under the Anti-Racketeering Act.

REASONS FOR GRANTING THE WRIT

1. The decision below is the first rendered by an appellate court construing the Anti-Racketeering Act;[13] it presents an important question of statutory interpretation which has not been, but should be, settled by this Court.

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[13] There are only two reported decisions by District Courts under the Act. Neither passed upon its meaning. *United States* v. *McGlone*, 19 F. Supp. 285 (E. D. Pa.), involved solely the sufficiency of the evidence and *United States* v. *Gramlich*, 19 F. Supp. 422 (S. D. Ill.), involved solely the question of constitutionality.

The decision below, if allowed to stand, would deprive the Anti-Racketeering Act of a great deal of its vitality. That decision, in effect, provides labor racketeers with a ready formula for easy evasion of the Act: they need only require that the money they extort be paid in the form of wages, and assure that a proper proffer of services (whether desired or not) is made, and the prohibitions of the Act become inapplicable to them. A decision placing such a drastic restriction upon the practical operation of an important Act of Congress should, we submit, be reviewed by this Court.

The initiation of additional prosecutions in other circuits in an attempt to secure a conflict of decisions would not be a satisfactory alternative to the grant of a writ of certiorari in this case. Such a course would mean that various defendants might from time to time be brought to trial and convicted under an interpretation of the statute which this Court might later hold to be erroneous. It would also mean, if the Government's position should ultimately be sustained by this Court, that the Act would have been rendered inoperative within the Second Circuit, as applied to this important class of cases, during the period required for the institution of additional prosecutions elsewhere and for securing review thereof by the appellate courts. In these circumstances, the desir-

ability of a review of the present case by this Court seems evident."[14]

2. The decision below, we believe, misconstrues the statute. The exception in Section 2 (a) excludes from the Act only "the payment of wages by a bona fide employer to a bona fide employee." Money paid by a truck operator to one who is not employed by him and who does not render services for him does not, we submit, become "wages" paid by a bona fide employer to a bona fide employee simply because the recipient of the money may proffer services which he is qualified to render. The proffer of services can neither create a bona fide employer-employee relationship, nor can it convert payments, intended by the truck operator to purchase "protection" from interference, into

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[14] The grant of certiorari will bring in issue not only the meaning of the exemption of "wages" paid by a "bona fide" employer to a "bona fide" employee, but also the meaning of the proviso in Section 6, which reads:

"That no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

In the court below Judge Clark, in a concurring opinion, expressed the tentative conclusion that the use of force or violence by members of a labor organization to obtain money from employers constitutes "lawfully" carrying out the "legitimate objects" of such organization, within the meaning of the above proviso (R. 2808–2809). The District Court and Judge A. N. Hand necessarily rejected this interpretation, *sub silentio;* Judge L. Hand expressed no opinion thereon.

compensation to the truck driver in connection with the driving and unloading of trucks.

The contrary result reached by the majority of the court below is predicated on the propositions (1) that the exemption in clause (a) excludes from the operation of the Act all money paid under or pursuant to a genuine employer-employee status, even though the status was initially obtained through the use of force or violence; and (2) that it is unreasonable to assume that those who succeed in obtaining employment through force or violence are excluded, while those who fail to obtain employment, because their proffer of services is rejected, are included. Even if the first proposition were to be conceded, the plain words of the statute would seem to forbid indulgence in the assumption which forms the basis of the second proposition. The statute expressly exempts wages paid pursuant to a genuine employer-employee relationship; it neither expressly nor by implication exempts money paid to one who is not an employee, irrespective of the reason for his failure to obtain an employee status. In this connection, it is to be noted that the interpretation placed upon the statute by the prevailing opinion below practically nullifies the words "bona fide" which qualify both employer and employee in the excepting clause.

That the Congress may have had a good reason to differentiate between wages paid to employees, even though their employment was obtained

through coercion, and money paid to others whose proffered services have been rejected, is pointed out in the dissenting opinion of Judge A. N. Hand. He stated (R. 2810):

> It may be added that Congress may have determined to exempt men from prosecution under the Anti-Racketeering Act who actually obtain a status as employees, even though the status is secured by coercion, but not to grant exemption to men who have done nothing but "shake down" prospective employers without rendering any service. The one policy might tend to preserve an employer-employee relation when once established, while the other would involve toleration of intermittent acts of brigandage resulting in no ascertainable advantage.

In our view, the essential question which the jury was required to determine in this case was whether the money paid respondents was or was not paid pursuant to a "bona fide" employer-employee relationship—in other words, whether both respondents and truck owners recognized that the payments were for "protection" against violence or whether they recognized them as a return for services rendered, however reluctant the truck owners might have been to accept such services, and however disproportionate to the payments the actual services may have been. The jury was instructed that the fact that some services had been rendered to the truck operators was evidence from

which the jury might conclude that a genuine employer-employee relationship had been established, but that this fact alone was not conclusive that such a relationship had been established and was to be considered along with any other evidence bearing upon the question. The full instructions of the District Court to the jury on this point appear at R. 2450–2451. Examination of those instructions makes it apparent, we believe, that the charge was accurate and adequate and that it correctly applied the statute.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

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